

Summary of OCR’s Investigation to Date

The College’s Office of Assisted Learning Services (the ALS office) is charged with overseeing the provision of academic adjustments to students with disabilities. Upon approval, academic adjustments are identified in a “Student Information Form” (the academic adjustments form), given to students, and a “Notification to Instructor” (the instructor notice), that is given to students’ instructors. Students must also sign an “[ALS] Student Testing Procedures Acknowledgement” form (the acknowledgement form), outlining the ALS office’s testing procedures.

The College provided OCR with copies of the academic adjustments form, the instructor notice, and the acknowledgement form. The academic adjustments form and the instructor notice list various academic adjustments (e.g., extended time on tests and quizzes, change of test and quiz location, tutoring, etc.) that are marked to indicate whether the particular academic adjustment is granted. OCR’s review of these forms revealed that four of the listed academic adjustments are written in an inconsistent manner on the Academic Adjustments form compared to the Instructor Notice:

Academic Adjustments Form	Instructor Notice
Extended time on tests/quizzes	Extended time on tests
Reader for tests/quizzes	Reader for tests
Writer for tests/quizzes	Writer for tests
Change of test/quiz location	Change of test location
Accompanied by a service animal	Accompanied by leader dog

- **The Student’s Academic Adjustments**

XXXXX – PARAGRAPH REMOVED – XXXXX

XXXXX – PARAGRAPH REMOVED – XXXXX

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Applicable Regulatory Standards

The Section 504 implementing regulation, at 34 C.F.R. §104.4(b)(1)(ii), prohibits recipients from affording a qualified person with a disability an opportunity to participate in or benefit from the entity's aid, benefit, or service that is not equal to that afforded to others. The Section 504 regulation also provides, at 34 C.F.R. § 104.44(a), that a recipient shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified student with a disability. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student will not be regarded as discriminatory.

Similarly, the Title II regulation, at 28 C.F.R. § 35.130(b)(7), provides that a public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

After being admitted to a postsecondary institution, if a student with a disability believes they will need academic adjustments, the student should contact the institution's office that provides services to students with disabilities. The postsecondary institution should work with the student in an interactive process to identify the needed documentation and to determine the appropriate academic adjustments, if any. Students can be required to know about and follow reasonable procedures when requesting academic adjustments.

With regard to whether a requested academic adjustment or auxiliary aid would fundamentally alter an essential program requirement, courts and OCR give deference to an institution's academic decision-making. However, in order to receive such deference, relevant officials within the institution are required to have engaged in a reasoned deliberation, including a diligent assessment of available options.

An appropriate deliberative process should include a group of people making the decision who are trained, knowledgeable, and experienced in the relevant areas. A postsecondary institution may not allow professors to unilaterally deny academic adjustments that had been approved by the college's disability services office. While it reasonably might be expected that a course professor would be included in the process of determining what requirements are essential to participation, allowing an individual professor to have ultimate decision-making authority is not in keeping with the diligent, well-reasoned, collaborative process that warrants accord of deference by OCR to the judgments of academic institutions. The decision makers must consider a series of alternatives, and the decision should be a careful, thoughtful, and rational review of the academic program and its requirements. In addition, while removal of a requirement that would lower academic standards or require fundamental program alteration is not required, an

It is undisputed that the Student is a qualified individual with a disability and that the Student notified the College of XXXXX disability and need for academic adjustments. It is further undisputed that the Student requested, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, academic adjustments to allow the Student to participate in the College's educational program, XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX.

However, while not a subject of this complaint, information OCR received to date raises a cause for concern that the College did not comply with the requirements of Section 504 and Title II when handling the Student's requests for academic adjustments.

XXXXX – SENTENCE REMOVED - XXXXX The College did not allege that the Student's requested academic adjustments would have constituted a fundamental alteration of one or more of XXXXXX courses.

Based on the foregoing, the evidence obtained to date raises a cause for concern that the College's handling of the Student's requests for academic adjustments, XXXXX XXXXX

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX
XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX violated the
requirements of Section 504 and Title II.

OCR further notes that the inconsistent manner in which academic adjustments are listed on the academic adjustments form and the instructor notice, and the lack of specificity on the forms with regard to XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX, could result in the College failing to provide students with their approved academic adjustments in violation of Section 504 and Title II. OCR staff provided technical assistance to the College regarding this matter.

Voluntary Resolution and Conclusion

Under Section 302 of OCR's *Case Processing Manual*, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the allegations and OCR determines that it is appropriate to resolve them because OCR's investigation has identified concerns that can be addressed through a resolution agreement. In this case, the College expressed an interest in resolving the allegation prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. On November 18, 2022, the College signed the enclosed Resolution Agreement, which, when fully implemented, will address all of the allegations in the complaint. OCR will monitor the implementation of the Resolution Agreement.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. Individuals who file complaints with OCR may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the College must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information, that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

The complainant has a right to appeal OCR's determination within 60 calendar days of the date indicated on this letter. In the appeal, the complainant must explain why the factual information was incomplete or incorrect, the legal analysis was incorrect or the appropriate legal standard was not applied, and how correction of any error(s) would change the outcome of the case; failure to do so may result in dismissal of the appeal. If the complainant appeals OCR's determination, OCR will forward a copy of the appeal form or written statement to the recipient. The recipient has the option to submit to OCR a response to the appeal. The recipient must

submit any response within 14 calendar days of the date that OCR forwarded a copy of the appeal to the recipient.

OCR looks forward to receiving the College's first monitoring report by December 18, 2022. For questions about implementation of the Agreement, please contact Ms. Hanna Klein, who will oversee the monitoring and can be reached by telephone at XXXXX or by e-mail at XXXXX. If you have questions about this letter, please contact me by telephone at XXXXX or by e-mail at XXXXX.

Sincerely,

/s/

Brenda Redmond
Supervisory Attorney/Team Leader

Enclosure